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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8
9 UNITED STATES OF AMERICA,) 2:05-cr-209-JCM-RJJ
10 Plaintiff,)
11 vs.) **GOVERNMENT'S MOTION**
12 ALLAN D. NYE,) **FOR ORDER WAIVING**
13 Defendant.) **ATTORNEY CLIENT PRIVILEGE**
14) **TO ADDRESS ALLEGATIONS IN**
15) **NYE'S 28 U.S.C. § 2255 MOTION AND**
15) **ORDERING NYE'S FORMER**
15) **ATTORNEYS TO PROVIDE**
15) **INFORMATION**
15 _____)

16 COMES NOW, the United States of America by and through its attorneys, DANIEL
17 G. BOGDEN, United States Attorney, and ADAM M. FLAKE, Assistant United States
18 Attorney, and respectfully requests this Court enter an order of waiver of the attorney-client
19 privilege in this case and ordering Nye's former attorneys, Michael Sanft and William Carrico,
20 to provide the Government with the information requested in this motion.

21 This order is sought for the following reasons:

- 22 1. Defendant has filed a 28 U.S.C. § 2255 motion to vacate, set aside or correct
23 sentence by a person in federal custody, alleging ineffective assistance of counsel.
24 2. Information from Defendant's former attorneys, Michael Sanft and William Carrico,
25 is necessary in order to respond to Defendant's allegations.

3. The Government requests this Court's order that the attorney-client privilege is waived as to all contentions raised in Defendant's 18 U.S.C. § 2255 Motion, that all material and information related thereto be divulged to the Government, and that attorneys Michael Sanft and William Carrico, provide affidavits containing the same forthwith.

4. The voluntary disclosure by a defendant of privileged attorney communications “constitutes waiver of the privilege as to all other such communications on the same subject.” *Weil v. Investment/Indicators, Research & Management*, 647 F.2d 18, 24 (9th Cir. 1981); see also *United States v. Zolin*, 809 F.2d 1411, 1415-16 (9th Cir. 1987); *Clady v. County of Los Angeles*, 770 F.2d, 1421, 1433 (9th Cir. 1985).

Even when a party does not explicitly disclose the content of an attorney-client communication, he may waive the privilege implicitly. A person cannot always claim that he relied on counsel, while protecting what was said between them from disclosure. As we have said: "The privilege which protects attorney-client communications may not be used both as a sword and a shield. Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived." (Citations omitted.)

United States v. Ortland, 109 F.3d 539, 543 (9th Cir. 1997).

WHEREFORE, based on the foregoing, it is respectfully requested that this Court enter an order that the attorney-client privilege in this case as to Defendant is waived with respect to the issues put at issue in his 28 U.S.C. § 2255 motion and that Michael Sanft and William Carrico provide the Government with affidavits addressing the allegations of ineffective assistance of counsel in Defendant's 28 U.S.C. § 2255 motion.

DATED this 21st day of October, 2010.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

/s/ Adam M. Flake

ADAM M. FLAKE

Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,
Plaintiff,
vs.
ALLAN D. NYE,
Defendant.

} 2:05-cr-209-JCM-RJJ
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}
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}
**ORDER WAIVING
ATTORNEY CLIENT PRIVILEGE
TO ADDRESS ALLEGATIONS IN
NYE'S 28 U.S.C. § 2255 MOTION AND
ORDERING NYE'S FORMER
COUNSEL TO PROVIDE INFORMATION**

10 Based on the pending application of the Government, and good cause appearing,
11 **IT IS THEREFORE ORDERED** that the attorney-client privilege in case No. 2:05-cr-
12 209-JCM-RJJ is waived with respect to the allegations in Defendant's 28 U.S.C. § 2255
13 motion, and that attorneys Michael Sanft and William Carrico, shall forthwith provide the
14 Government with affidavits addressing the allegations of ineffective assistance in
15 Defendant's 28 U.S.C. § 2255 motion.

DATED: this 24th day of February, 2011.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2010, I electronically filed the foregoing
GOVERNMENT'S MOTION FOR ORDER WAIVING ATTORNEY CLIENT PRIVILEGE
TO ADDRESS ALLEGATIONS IN NYE'S 28 U.S.C. § 2255 MOTION AND ORDERING
NYE'S FORMER ATTORNEYS TO PROVIDE INFORMATION with the Clerk of the Court
for the District of Nevada by using the appellate CM/ECF system.

I certify that service will be accomplished by the CM/ECF system, and
by U. S. Mail to the following:

Allen D. Nye
40327-048
Englewood
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
9595 West Quincy Avenue
Littleton, CO 80123

/s/ Terrie Murray
TERRIE MURRAY
Legal Assistant